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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/649,127

08/27/2003

Edward N. Barthell

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7590

11/24/2006

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EXAMINER

RANGREJ, SHEETAL

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/649,127	Applicant(s) BARTHELL, EDWARD N.	
	Examiner Sheetal R. Rangrej	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 24-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>08/27/2003</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-23, drawn to a method of detecting a bio-emergency, classified in class 705, subclass 2.
 - II. Claims 24-26, drawn to a method of compiling medical information, classified in class 705, subclass 3.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as detecting a bio-emergency. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to

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provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

10. During a telephone conversation with Timothy E. Newholm on November 8, 2006 a provisional election was made with traverse to prosecute the invention of detecting a bio-emergency, claims 1-23. Affirmation of this election must be made by applicant in replying to this Office action. Claims 24-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Prosecution History Summary

4. Claims 1-23 are pending.

5. Claims 24-26 are withdrawn.

Priority

6. Application 10/649127 holds the benefit of the provisional application, 60/418104.

IDS

7. The examiner considered the IDS statement submitted on August 27, 2003, however PCT/WO/02/25551 A1 was not considered because it was not provided.

Specification

8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: categorizing the symptom information (claim 17).

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Reference

A.

11. As per claim 1, Reference A teaches the method of detecting a bio-emergency:

- a. Receiving patient health information at a plurality of health care facilities (page 3, paragraph 0030, lines 4-7).
- b. Transmitting, simultaneously with said receiving step, the patient health information to a bio-surveillance network (page 4, paragraph 0038, lines 1-3).
- c. Compiling the patient health information to create compiled health data (page 3, paragraph 0030, lines 9-12; page 4 paragraph 0035, lines 1-15).

12. As per claim 2, the method of claim 1 is as described above. Reference A further teaches wherein the bio-surveillance network includes at least one regional repository that communicates directly with at least one of the health care facilities (page 2, paragraph 0019, lines 10-13). In light of the specification, the examiner interprets health officials to be the same as health care facilities.

13. As per claim 3, the method of claim 2 is as described above. Reference A further teaches wherein the regional repository is a regional health department (page 4, paragraph 0038, lines 1-3). In light of the specification, the examiner interprets the central database to be the same as a regional health department.

14. As per claim 4, the method of claim 2 is as described above. Reference A further teaches wherein the at least one regional repository includes a plurality of regional repositories (page 6, paragraph 0054, lines 1-3).

15. As per claim 5, the method of claim 4 is as described above. Reference A further teaches wherein said compiling step is performed at the regional repositories (page 4, paragraph 0038, lines 1-8). In light of the specification, the examiner interprets the central collecting computer to be the same as a regional repository.

16. As per claim 6, the method of claim 5 is as described above. Reference A further teaches communicating the compiled health data to at least one group including the regional repositories (page 6, paragraph 0041, lines 11-14 and lines 19-23) and a centralized recipient (page 3, paragraph 0030, lines 17-19).

17. As per claim 7, the method of claim 5 is as described above. Reference A further teaches the bio-surveillance network includes a centralized recipient that receives the compiled health care data from at least one of the regional repositories (page 3, paragraph 0030, lines 17-19).

18. As per claim 8, the method of claim 7 is as described above. Reference A further teaches comparing the compiled health data to a threshold (page 5, paragraph 0051, lines 8-12).

19. As per claim 9, the method of claim 8 is as described above. Reference A further teaches generating a warning signal in response to said comparing step (page 5, paragraph 0047, lines 5-10).

20. As per claim 10, the method of claim 9 is as described above. Reference A further teaches communicating the warning signal to at least one of a group including the health care facilities (page 5, paragraph 0048, lines 2-7), a law enforcement agency (page 3, paragraph 0030, line 19).

21. As per claim 11, the method of claim 10 is as described above. Reference A further teaches communicating the warning signal is performed automatically in response to said comparing step (page 5, paragraph 0048, lines 2-7).

22. As per claim 12, the method of claim 7 is as described above. Reference A further teaches the centralized recipient is the Centers for Disease Control (page 3, paragraph 0030, line 19).

23. As per claim 13, the method of claim 1 is as described above. Reference A further teaches wherein the patient health information includes triage information (page 3, paragraph 31, lines 1-3).

24. As per claim 14, the method of claim 13 is as described above. Reference A further teaches wherein the triage information includes symptom information (page 3, paragraph 31, lines 1-6).

25. As per claim 15, the method of claim 14 is as described above. Reference A further teaches the triage information includes a primary complaint (page 3, paragraph 31, lines 1-6).

26. As per claim 16, the method of claim 15 is as described above. Reference A further teaches the triage information includes a secondary complaint (page 3, paragraph 31, lines 1-9). In light of the specification, the examiner interprets patient presenting symptoms is the same as a secondary complaint.

27. As per claim 17, the method of claim 14 is as described above. Reference A further teaches categorizing the symptom information (page 5, paragraph 0053, lines 8-18; page 6, paragraph 0054, lines 1-11). In light of the specification, the examiner interprets symptoms to be categorized if used to predict certain illnesses and injuries.

28. As per claim 18, the method of claim 1 is as described above. Reference A further teaches categorizing step includes generating syndromic data (page 5, paragraph 0051, lines 3-6).

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29. As per claim 19, the method of claim 1 is as described above. Reference A further teaches said receiving step is performed using proprietary software (page 3, paragraph 0030, lines 4-9). In light of the specification, the examiner interprets the patient information is being captured by the software.

30. As per claim 20, the method of claim 1 is as described above. Reference A further teaches wherein said transmitting step is implemented via the Internet (page 4, paragraph 0041, lines 16-19).

31. As per claim 21, Reference A teaches a method of detecting a bio-emergency:

- a. Receiving individual triage patient health information at a plurality of health care facilities from each of a plurality of patients (page 3, paragraph 0031, lines 1-5).
- b. On a patient-by-patient basis, electronically recording triage data for that patient in a computer of the associated health care facility, the triage data for each patient containing at least some of the received health information for that patient (page 3, paragraph 0030, lines 4-7 and paragraph 0031, lines 1-8).
- c. Upon recording the triage data for each patient, transmitting at least a portion of the recorded triage data to a computer for one of a plurality of regional repositories automatically and in at least near real-time, the computer for each of the regional repositories receiving triage data from a computer for each of a plurality of the health care facilities (page 5, paragraph 0047, lines 5-10 and paragraph 0048, lines 2-7).

- d. Transmitting triage data to a computer for a centralized recipient from the computers for regional repositories automatically and in at least near real time with its receipt from the computers for the health care facilities (page 5, paragraph 0048, lines 2-7).
- e. Analyzing the triage data and determining, based on the analysis, whether a possible bio-emergency exists (page 5, paragraph 0047, lines 5-10).
- f. Communicating, from the centralized recipient, information regarding the possible bio-emergency to at least one or more of the regional repositories, one or more health care facilities, and other institutions having an interest in responding to a possible bio-emergency (page 5, paragraph 0048, lines 1-7)

32. As per claim 22, the method of claim 21 is as described above. Reference A further teaches:

- a. Compiling the triage data for individual patients to generate volumetric triage data (page 5, paragraph 0051, lines 6-8).
- b. Comparing the volumetric triage data with a predetermined threshold; and transmitting a warning in response to said comparing step (page 5, paragraph 0051, lines 6-17);

33. As per claim 23, the method of claim 22 is as described above. Reference A further teaches compiling step is performed by the computer for the regional repositories (page 5, paragraph 0045, lines 1-10; the examiner interprets the database to be the same as regional repository), and the comparing step is performed by the

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computer for the centralized recipient (page 5, paragraph 0048, lines 1-10; the examiner interprets designated authorities to be the same as centralized recipients).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheetal R. Rangrej whose telephone number is 571-270-1368. The examiner can normally be reached on 5/4/9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Nolan can be reached on 571-272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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